

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

FLAGSTAR BANK, FSB,	:	APPEAL NO. C-081091
	:	TRIAL NO. A-0410270
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
AMERICAN LIBERTY MORTGAGE, INC.,	:	
	:	
Defendant-Appellant,	:	
	:	
and	:	
	:	
AMERICAN FINANCIAL FREEDOM, INC.,	:	
	:	
Defendant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

American Liberty Mortgage, Inc., appeals the trial court's entry of a default judgment against it. We conclude that Flagstar Bank, FSB, perfected service upon American Liberty, and that the trial court did not abuse its discretion when it entered a default judgment against American Liberty.

Flagstar sued American Liberty to recover the unpaid balance on mortgage loans purchased from American Liberty before it was dissolved as a corporation. American Financial Freedom, Inc., was made a defendant under a theory of successor liability. American Liberty did not answer the complaint, and the trial court granted a default judgment against it. American Financial then filed for bankruptcy, which stayed the successor-in-interest claims against it.

¹See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In the appeal numbered C-070504, American Liberty appealed the default judgment against it. This court concluded that, despite the trial court's inclusion of Civ.R. 54(B) certification language, the default judgment was not a final, appealable order because the successor-in-interest claims were unresolved. Flagstar subsequently dismissed its claims against American Financial. This appeal followed.

In its sole assignment of error, American Liberty asserts that the trial erred when it granted a default judgment against it. It contends that service was not perfected on American Liberty. "A default judgment rendered without proper service is void."² We review the trial court's determination of whether service was sufficient under an abuse-of-discretion standard.³

Under R.C. 1701.88(C), a complaint against a dissolved corporation "may be served by delivering a copy to an officer, director, liquidator, or person having charge of its assets or, if no such person can be found, to the statutory agent." Civ.R. 4.1(A) provides that service may be obtained by certified mail. In *Akron-Canton Regional Airport Auth. v. Swinehart*, the Ohio Supreme Court held that "[s]ervice of process may be made at an individual's business address pursuant to Civ.R. 4.1(1), but such service must comport with the requirements of due process."⁴ Due-process requirements are met where the method of service is reasonably calculated to reach the interested party.⁵

Adrian Sellers was the statutory agent for both American Liberty and American Financial. Flagstar sent a summons and complaint to American Liberty and its agent, Sellers, at American Liberty's last known address on Cincinnati-Dayton Road in West Chester, Ohio. Flagstar also sent a summons and complaint to American Financial and its agent, Sellers, at American Financial's address on Squire Court in West Chester, Ohio.

² *Caldwell v. Alston* (Oct. 2, 1996), 1st Dist. No. C-950688.

³ *Bell v. Midwestern Edn. Servs.* (1993), 89 Ohio App.3d 193, 203, 624 N.E.2d 196.

⁴ (1980), 62 Ohio St.2d 403, 406 N.E.2d 811, syllabus.

⁵ *Id.* at 406.

The summons sent to the Cincinnati-Dayton address was returned unopened. Gidgett Howard, an employee of American Financial, signed the receipt for the summons and complaint sent to American Financial. Flagstar then sent the summons and complaint to American Liberty, in care of Adrian Sellers, at the Squire Court address. Howard again signed the return of service.

We conclude that the service of the summons and complaint sent to American Liberty, in care of Sellers as the statutory agent, at the Squire Court address was reasonably calculated to reach him. Indeed, the record demonstrates that the same person, Howard, signed the return of service for both deliveries. And although American Liberty did not file an answer to the complaint, American Financial and its agent, Sellers, participated actively in the proceedings. When Flagstar filed its motion for a default judgment against American Liberty, American Financial's participation extended to filing a memorandum concerning the motion for default and to filing objections to the magistrate's decision that granted the default judgment. American Liberty's contention that it did not receive notice of the proceedings is disingenuous.

Nor are we persuaded that the trial court improperly entered a default judgment without first having had a hearing under Loc.R. 13 of the Court of Common Pleas of Hamilton County, General Division. Under that rule, if the damages sought in a default judgment are unliquidated or if the party against whom the judgment is sought has appeared in the action, a hearing before the magistrate is required.⁶ And "[if], at the hearing before the Magistrate, any opposition develops to the granting of the default judgment, the Magistrate shall take no action but shall advise counsel for the moving party to set the matter before the assigned Trial Judge[.]"⁷ Here, the damages were liquidated and American Liberty had not appeared in the action. Nonetheless, the case was

⁶ Loc.R. 13(A).

⁷ Loc.R. 13(C).

scheduled for a hearing before the magistrate. Neither American Liberty nor American Financial appeared at that hearing to oppose the default judgment, so it was not necessary to set the case before the trial court.

The trial court did not err when it granted a default judgment. The judgment of the trial court is affirmed.

HENDON, P.J., HILDEBRANDT and SUNDERMANN, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 1, 2009

per order of the Court _____.

Presiding Judge